

MODEL STATE EMERGENCY HEALTH POWERS ACT

Q&A On the Model State Emergency Health Powers Act

Text of the MSEHPA

What is MSEHPA?

MEHPA stands for "Model State Emergency Health Powers Act." It is a draft of model legislation to increase state powers to respond to bioterrorism or other outbreaks of disease that the Centers for Disease Control and others want the states to pass into law. Although such legislation is needed, the current draft of the Model Act unfortunately is written in a way that doesn't adequately protect citizens against the misuse of the tremendous powers that it would grant in an emergency.

What is wrong with MSEHPA?

Although extraordinary measures may be required during an emergency, the Model Act is replete with civil liberties problems. Its three top flaws are that:

- 1. It fails to include basic checks and balances.** The Act would grant extraordinary emergency powers, but that kind of authority should never go unchecked. Public health authorities make mistakes, and politicians abuse their powers; there is a history of discriminatory use of the quarantine power against particular groups of people based on race and national origin, for example. The lack of checks and balances could have serious consequences for individuals' freedom, privacy, and equality. The Act lets a governor declare a state of emergency unilaterally and without judicial oversight, fails to provide modern due process procedures for quarantine and other emergency powers, it lacks adequate compensation for seizure of assets, and contains no checks on the power to order forced treatment and vaccination.
- 2. It goes well beyond bioterrorism.** The act includes an overbroad definition of "public health emergency" that sweeps in HIV, AIDS, and other diseases that clearly do not justify quarantine, forced treatment, or any of the other broad emergency authorities that would be granted under the Act.
- 3. It lacks privacy protections.** The Act requires the disclosure of massive amounts of personally identifiable health information to public health authorities, without requiring basic privacy protections and fair information

practices that could easily be added to the bill without detracting from its effectiveness in quelling an outbreak. And the Model Act would undercut existing protections for sensitive medical information. That not only threatens to violate individuals' medical privacy but undermines public trust in government activities.

The act is a throwback to a time before the legal system recognized basic protections for fairness; before public health strategies were rooted in voluntary compliance; and before the information age dictated the need for privacy protections of individuals' personal information.

What is the status of the MSEHPA?

Professor Gostin released a second draft of the act in December 2001. It is unclear if this will be the final proposal or a second draft. But the existing draft has been distributed by the Federal government and is being considered in various states around the country. Since October, some governors and state legislators have already called for adoption of the Model Act (for example in Massachusetts, Minnesota, California, New York, Illinois, and Nevada). Given the perceived urgency of the issue, it is likely that many states will consider the Model Act or some other bioterrorism legislation or regulation in the next few months.

Where did the Model Act come from?

The terrorist attacks on September 11 led to growing concern about the possible threat of biological terrorism and the ability of the government to respond effectively to such threats at the federal, state, and local level. MSEHPA was released in October as part of the federal government's response to the threat of bioterrorism. MSEHPA is model legislation that would be passed by the states to increase their emergency public health powers. The Model Act was funded through a grant from the Centers for Disease Control and Prevention ("CDC") and written by Professor Larry Gostin, Co-Director of the Center for Law and the Public's Health at Georgetown and Johns Hopkins Universities.

Aren't strong public health powers needed?

Yes. The threat of bioterrorism is of serious concern to each and every one of us, and the government has a responsibility to prevent and respond to incidents of bioterrorism that could have serious and deadly consequences. Bioterrorism or naturally occurring epidemics warrant extraordinary government action to protect the public health. And the CDC and the drafters of this model legislation are correct that public health law must be modernized in the face of today's terrorist

threats, and that the law needs to be clear about the extent and boundaries of the government's powers in times of crisis. Unfortunately, MSEHPA is not confined to achieving those goals.

Is anyone else complaining about the MSEHPA?

The ACLU is not alone in its concern about the legislation. There is opposition to the Model Act from organizations on both the right and left of the political spectrum. The conservative Free Congress Foundation, and the American Legislative Exchange Council, the conservative association of state legislators, have both opposed the draft of the Model Act. The Human Rights Campaign and the Health Privacy Project have also raised concerns about the legislation.

Other Resources

- [Map showing status of MSEHPA in the states - American Legislative Exchange Council](#)
- [Health Privacy Project comments on first draft of MSEHPA](#)
- [Letter on MSEHPA by the Human Rights Campaign](#)
- [Analysis of MSEHPA by the Association of American Physicians and Surgeons](#)

Press Releases

- 02/05/1998 -- [ACLU Warns Congress on HIV Testing and Name Reporting](#)
- 12/18/1997 -- [ACLU Lauds Maryland's HIV Tracking System](#)